

1984 WL 249899 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 1, 1984

*1 Ms. Patricia N. Murphy
South Carolina Law Enforcement Division
Post Office Box 21398
Columbia, South Carolina 29221

Dear Ms. Murphy:

You have asked this Office whether the prohibition against dual office holding in the Constitution of the State of South Carolina would be contravened if an individual were to serve simultaneously as a state constable and a superintendent of a school district. It is the opinion of this Office that the superintendent of a school district would be an employee of the board of trustees rather than an officer; thus, one who would serve as superintendent and state constable simultaneously would not be considered to hold dual offices.

[Article XVII, § 1A of the South Carolina Constitution](#) provides that ‘. . . no person shall hold two offices of honor or profit at the same time.’ For this provision to be contravened, a person concurrently must hold two public offices which have duties involving an exercise of some portion of the sovereign power of the State. [Sanders v. Belue](#), 78 S.C. 171, 58 S.E. 762 (1907). Other relevant considerations are whether statutes, or other such authority, establish the position, prescribe its tenure, duties or salary, or require qualifications or an oath for the position. [State v. Crenshaw](#), 274 S.C. 475, 266 S.E.2d 61 (1980). As you are well aware, this Office has concluded on numerous occasions that the holding of a state constable's commission constitutes an office for dual office holding purposes. See, for example, [Ops. Atty. Gen.](#) dated March 1, 1983, and May 18, 1983.

The individual in question is employed by the Board of Trustees as superintendent of Orangeburg School District No. 1, which covers the schools in Springfield, Norway, and Neeses. His position is not created by statute or ordinance; furthermore, no statute specifies his duties. He is not required to take an oath and has not been commissioned. He does not serve as superintendent for a specified term of years, his tenure being determined by his contract with the district's trustees. A salary is specified by his contract, as are qualifications. Though no legislative enactments have specified the superintendent's powers and duties, it is apparent that the Board of Trustees has been delegated certain sovereign powers in the field of education. See, Act No. 291, 1979 Acts and Joint Resolutions and Chapter 17 of Title 59, Code of Laws of South Carolina (1976 and 1983 Cum. Supp.). It would appear that the superintendent thus occupies a ministerial position as an employee of the Board of Trustees. The court in [Sanders v. Belue](#), *supra*, has stated that ‘one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee.’ 78 S.C. at 174. Thus, it is the opinion of this Office that the individual in question is an employee rather than an officer and would not be violating the prohibition against dual office holding if he were to be commissioned a state constable.

*2 This opinion is consistent with prior Opinions of the Attorney General dated May 15, 1962, and August 20, 1953, copies of which are enclosed. We would note that this opinion may not be applicable to all school superintendents, particularly where the district is county-wide, powers and duties are specified by statute, or other distinguishing factors are present. We would further distinguish an opinion issued by this Office on March 16, 1984, holding the District Superintendent of Greenville County to be an officer, as that position is created by statute, its powers, duties and so forth are specified by statute, and his jurisdiction covers the entire county.

I trust that this opinion satisfactorily resolves your inquiry. If you need additional information or clarification, please advise us.

Sincerely,

Patricia D. Petway
Staff Attorney

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